

Remarks

This Amendment is in response to the Office Action dated **August 16, 2010**. The Office Action objected to claim 46; rejected claims 38, 58, and 67 under 35 USC § 112, second paragraph; rejected claims 38, 42, 45, 46, 67, 68, and 70 under 25 USC § 102(e) over Cox (US 6,461,380); rejected claim 43 under 35 USC § 103(a) over Cox in view of Roubin (US 5,827,321); rejected claim 39 under 35 USC § 103(a) over Cox in view of Kanesaka (US 5,810,872); rejected claim 57 under 35 USC § 103(a) over Roubin (US 5,827,321); and, appears to have rejected claims 39 and 63 under 35 USC § 103(a) over Cox in view of Kanesaka.

Independent claims 38, 58, and 67 are herein amended. Support for these amendments can be found in the Specification at least in FIG. 10.

Dependent claims 45 and 46 are herein amended to provide additional clarity and dependent claim 68 is amended to provide antecedent basis.

In light of the foregoing amendments and following comments, Applicants request reconsideration.

Claim Objections

The Office Action objected to dependent claim 46, asserting that “the recitation ‘is formed is tantalum’ (lines 1-2) is not correct.” Without acquiescing to the validity of the objection, claim 46 is herein amended to recite, “[t]he stent of claim 38 wherein the stent is formed from tantalum.” The objection is therefore believed moot.

Claim Rejections – Section 112, Second Paragraph

Claim 38

In rejecting claim 38 under § 112, second paragraph, the Office Action asserted, that the specification does not support the language “at a connected curved section” of claim 38. Claim 38 is amended to provide additional clarity. In particular, claim 38 is amended to recite, in-part, “each connected curved section being joined by a longitudinal connecting link to one connected curved section of an adjacent circumferential set of strut members, each connecting link that connects adjacent circumferential sets of strut members is connected at a connected curved section” This language of claim 38 is supported by FIG. 10, below, showing each of

the connecting links being connected at a connected curved section.

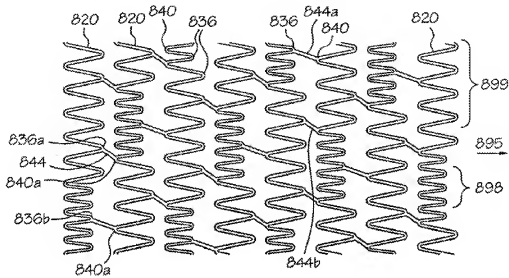


FIG. 10

In light of the foregoing, Applicants request withdrawal of the rejection.

Independent Claim 58 and Dependent Claims 59-66

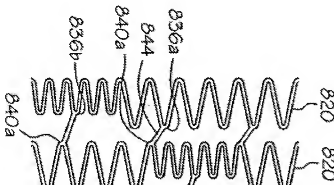
In rejecting claim 58 under § 112, second paragraph, the Office Action asserts, “[i]t is not clear what are the limits of the peaks, the limits of the troughs, the limits of 1st amplitude and the limits of 2nd amplitude. Clarification is required.”

The Office Action’s rejection of claims 58-66 under 35 USC § 112, second paragraph, is *traversed*. Office Action at 3, para. 2.

In order to comply with the definiteness requirement of 35 USC § 112, second paragraph, the “claim must have a meaning discernible to one of ordinary skill in the art when construed according to correct principles. Only when a claim remains insolubly ambiguous without a discernible meaning after all reasonable attempts at construction must a court declare it indefinite.” *Metabolite Labs., Inc. v. Lab. Corp. of Am. Holdings*, 370 F.3d 1354, 1366, 71 USPQ2d 1081, 1089 (Fed. Cir. 2004).

In light of the immediate specification, the skilled artisan would understand what is meant by the claimed terms. For example, as discussed at page 12, lines 3-6 of Applicant’s Specification, and as shown below in the partial view of FIG. 10:

[i]n another embodiment of the invention, as shown in FIG. 10, each band-like element 820 is seen to comprise peaks 836 of more than one amplitude and troughs 840 of more than one amplitude, however, peaks of the same amplitude are grouped together within a band-like element as are troughs of the same amplitude.



Moreover, as discussed in Applicants' Appeal Brief of April 9, 2010:

Amplitude can be defined as "[i]n physics, the height of a crest (or the depth of a trough) of a wave." (emphasis in original) *The American Heritage® New Dictionary of Cultural Literacy*, Third Edition. (Retrieved April 05, 2010, from Dictionary.com website: <http://dictionary.reference.com/browse/amplitude>). Another definition for amplitude is "[t]he maximum absolute value of a periodic curve measured along its vertical axis." *The American Heritage® Dictionary of the English Language*, Fourth Edition (Retrieved April 05, 2010, from Dictionary.com website: <http://dictionary.reference.com/browse/amplitude>).

In light of the foregoing, one of ordinary skill in the art would be adequately apprised of what is claimed in independent claim 58. *See* MPEP § 2173.02 ("In reviewing a claim for compliance with 35 U.S.C. 112, second paragraph, [T]he examiner must consider the claim as a whole to determine whether the claim apprises one of ordinary skill in the art of its scope and, therefore, serves the notice function required by 35 U.S.C. 112, second paragraph, by providing clear warning to others as to what constitutes infringement of the patent."). As such, Applicants request withdrawal of the rejection of claims 58-66 under 35 USC § 112, second paragraph.

Claim 67

In rejecting claim 67 under § 112, second paragraph, the Office Action asserts, "[i]t is not clear what is represented by 'its'. Clarification is required."

Claim 67 is herein amended to recite, in-part:

wherein the interconnecting elements are arranged such that each

interconnecting element which connects to an interior set adjacent the first end of the interconnecting element is connected to another interconnecting element which connects to the interior set adjacent the second end of the another interconnecting element via a pathway of only three connected strut members of the interior set.

In light of the foregoing, the rejection is believed moot.

Claim Rejections – Section 102

Claims 38, 42, 45, 46, 67, 68, and 70 over Cox

The Office Action rejected claims 38, 42, 45, 46, 67, 68, and 70 under 35 USC § 102(e) over Cox. Independent claim 38 is herein amended to recite, in-part, “each interior circumferential set of strut members including a plurality of strut members connected by curved sections, the plurality of strut members including long strut members and short strut members, at least two of the long strut members being attached to one another by one of the curved sections . . .” Cox does not disclose a stent comprising “at least two of the long strut members being attached to one another by one of the curved sections,” as claimed.

Independent claim 67 is amended to recite, in-part, “adjacent strut members within an interior set arranged in pairs of strut members wherein some of the strut pairs include a longer strut member and a shorter strut member and some of the strut pairs include two longer strut members . . .” Cox does not disclose a stent comprising “strut pairs [that] include two longer strut members,” as claimed.

In light of the foregoing, Applicants request withdrawal of the rejections of independent claims 38 and 67.

Dependent claims 42, 45, 46, 68, and 70 depend from independent claims 38 and 67, respectively. These claims are patentable for at least the reasons discussed with respect to independent claims 38 and 67. Consequently, Applicants request withdrawal of the rejections of dependent claims 42, 45, 46, 68, and 70.

Claim Rejections – Section 103

Claim 43 over Cox and Roubin

The Office Action rejected claim 43 under 35 USC § 103(a) over Cox in view of Roubin. Dependent claim 43 depends from independent claim 38 and Roubin does not remedy

the deficiencies of Cox discussed above with respect to independent claim 38. Consequently, Applicants request withdrawal of the rejection of dependent claim 43 over Cox in view of Roubin.

Claim 39 over Cox and Kanesaka

The Office Action rejected claim 39 under 35 USC § 103(a) over Cox in view of Kanesaka. Dependent claim 39 depends from independent claim 38 and Kanesaka does not remedy the deficiencies of Cox discussed above with respect to independent claim 38. Consequently, Applicants request withdrawal of the rejection of dependent claim 39 over Cox in view of Kanesaka.

Claim 57 over Cox in view of Roubin

The Office Action rejected claim 57 under 35 USC § 103(a) over Cox in view of Roubin. Dependent claim 57 depends from independent claim 38 and Roubin does not remedy the deficiencies of Cox discussed above with respect to independent claim 38. Consequently, Applicants request withdrawal of the rejection of dependent claim 57 over Cox in view of Roubin.

Claims 39 and 63 over Cox and Kanesaka

On page 7, the Office Action asserts, “[c]laim 57 is rejected under 35 USC § 103(a) . . .” The Office Action then asserts, “[a]s to claims 39 and 63, Cox-380 discloses substantially all limitations of the claimed invention, except for a circumferential and longitudinally offset straight link.” Although it is unclear which claims the rejection pertains to, Applicants presume that the rejection is directed to claims 39 and 63 in light of the rejection’s reference to “circumferential and longitudinally offset substantially straight elements.”

Dependent claims 39 and 63 depend from independent claim 38 and Kanesaka does not remedy the deficiencies of Cox discussed above with respect to independent claim 38. Consequently, Applicants request withdrawal of the rejection of dependent claims 39 and 63 over Cox in view of Kanesaka.

Dependent Claim 69

Applicants are unable to find any substantive rejection of dependent claim 69. In

this regard, Applicants request that any subsequent Office Action rejecting claim 69 be made non-final so that Applicants have an opportunity to respond to such a rejection.

Conclusion

Based on at least the foregoing remarks, Applicants request withdrawal of the rejections and allowance of claims 38, 39, 42, 43, 45, 46, and 57-70. Favorable consideration and prompt allowance of these claims is earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in better condition for allowance the Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

Date: November 3, 2010

By: /Michael J. McKeen/
Michael J. McKeen
Registration No.: 66069

6640 Shady Oak Rd., Suite 400
Eden Prairie, MN 55344-7834
Telephone: (952) 563-3000
Facsimile: (952) 563-3001